

**Jul 31, 2018**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

-vs-

ODELL KINARD, JR.,  
Defendant.

No. 2:17-CR-0101-WFN-23  
ORDER

The Court received a note from the jury indicating that after about six hours of deliberations they had reached an impasse. Court convened. Defendant was present with his counsel Richard Wall and Assistant United States Attorney Scott Jones was also present, with intern Emily Sauvageau. After discussing the note with counsel the Court asked the jury back into the courtroom. The Court queried the presiding juror who confirmed that the jury was hopelessly deadlocked. Upon further questioning the presiding juror indicated that further deliberations would not be fruitful. The Court polled the jury. Each juror confirmed the presiding juror's conclusions.

Counsel agreed that the Court should declare a mistrial due to the deadlock. The Court found that the jury was hopelessly deadlocked and declared a mistrial. After the jury was excused, the parties discussed scheduling. The Court has reviewed the file and is fully informed. This Order is entered to memorialize and supplement the oral rulings of the Court. Accordingly,

**IT IS ORDERED** that:

1. A trial shall be held October 29, 2018, at 10:00 a.m., in Spokane, Washington.
2. All time from the declaration of a mistrial on July 26, 2018, to the new trial date of October 29, 2018, is **EXCLUDED** for speedy trial calculations pursuant to 18 U.S.C. § 3161(e) and (h)(7). The case was previously declared complex.

1           3. A final pretrial conference and motion hearing shall be held **October 29, 2018, at**  
2 **8:30 a.m., in Spokane, Washington.**

3           4. Any updated trial materials shall be filed and served on or before **October 15,**  
4 **2018.**

5           5. The parties are requested to submit courtesy copies of witness and exhibit lists to  
6 the Court no later than **12:00 noon the Monday before trial.**

7           6. An additional pretrial conference shall be held **October 3, 2018, at 8:00 a.m., in**  
8 **Spokane, Washington.**

9           (a) All additional motions shall be filed and served no later than **September 7,**  
10 **2018.**

11           (b) Responses shall be filed and served no later than **September 21, 2018.**

12           7. Indigent Defendant's requests for issuance of subpoenas and payment of costs and  
13 fees for trial witnesses shall be filed no later than ten days before trial, excluding weekends  
14 and holidays.

15           8. The following procedures shall be utilized at trial:

16           (a) The Court will conduct the majority of jury voir dire but allow counsel ten  
17 minutes to ask additional questions or to do a more in depth exploration of issues raised by  
18 the Court;

19           (b) A total of 14 jurors will be selected, with the Government having 7  
20 peremptory challenges and Defendant having 11 challenges. The challenges shall be  
21 exercised simultaneously;

22           (c) Regular trial hours shall be from 8:30 a.m. to 12:00 noon, and 1:00 p.m. to  
23 4:30 p.m.;

24           (d) The jurors will be provided with notebooks for note-taking and a copy of the  
25 preliminary instructions;

26           (e) Documents published to the jury by counsel shall be collected at the  
27 conclusion of trial each day or following a witness's testimony regarding the published  
28 document;

1 (f) A single photograph shall be taken of all witnesses either directly before or  
2 following their testimony for use by the jury to correlate a witness with the testimony he or  
3 she provided. The photographs shall be maintained by the Court. The photograph will have  
4 the witness's name on it and the date of the witness's testimony. The photographs will be  
5 provided to the jury to assist them during deliberations. Following deliberations, the  
6 photographs will be destroyed by the Court and **will not** be a part of the record;

7 (g) Examination of witnesses shall be limited to direct, cross, redirect and  
8 recross. FED. R. EVID. 611(a);

9 (h) Counsel are encouraged to limit requests for sidebars by anticipating legal  
10 and evidentiary issues so that the issues may be addressed before trial begins each day,  
11 during the lunch hour, or after trial hours;

12 (i) During trial, counsel are encouraged to exchange lists of the next day's  
13 witnesses and exhibits so that objections or legal issues may be anticipated and resolved  
14 outside the normal trial hours; and

15 (j) Counsel shall have the next witness to be called to testify available to avoid  
16 delay; and

17 (k) If the Defendant is represented by CJA appointed counsel, the indigent  
18 Defendant's requests for issuance of subpoenas and payment of costs and fees for  
19 trial witnesses shall be filed no later than ten days before trial, excluding weekends and  
20 holidays. Defense counsel may request, as needed, that the motion and order be filed  
21 under seal. Defense counsel shall prepare a proposed order that includes the following  
22 language:

23 (i) That the United States Marshal shall serve the subpoenas on the  
24 witnesses identified by name, address and phone number. The subpoena shall  
25 state when the witnesses' appearance is requested;

26 (ii) The subpoenaed individual shall contact the United States  
27 Marshal in the district in which they are served so that the Marshal may make  
28 travel arrangements, for those witnesses requiring such arrangements;


1 (iii) Defense counsel shall contact the Case Administrator in the  
2 District Court Executive's office, 509-458-3400, to obtain information on how  
3 to make lodging arrangements for those witnesses requiring lodging; and

4 (iv) Any witness fees and per diem allowances shall be paid by the  
5 Government after the witness has testified. Requests for advance payment shall  
6 be directed to the United States Marshal in the district in which the witness is  
7 served or the United States Marshal in the district in which the witness is  
8 present to provide testimony.

9 (l) Counsel are informed that no CJA money is available to pay per diem  
10 expenses for indigent Defendants. Should an indigent Defendant require transportation to  
11 the trial, defense counsel shall apply for such travel and costs no later than ten days,  
12 excluding weekends and holidays prior to the date of the trial. **THERE IS NO FUNDING**  
13 **AVAILABLE FOR MEALS AND HOUSING DURING TRIAL.**

14 The District Court Executive is directed to file this Order and provide copies to  
15 counsel.

16 **DATED** this 31<sup>st</sup> day of July, 2018.

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18   
19 s/ Wm. Fremming Nielsen  
20 WM. FREMMING NIELSEN  
21 SENIOR UNITED STATES DISTRICT JUDGE  
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07-27-18